

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Schiavo	Team: Team # 4	CCRB Case #: 201400759	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 01/20/2014 4:30 AM	Location of Incident: 90-02 Roosevelt Avenue	Precinct: 110	18 Mo. SOL 7/20/2015	EO SOL 7/20/2015	
Date/Time CV Reported Mon, 01/20/2014 5:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 01/24/2014 2:13 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Maguire	10117	954087	PBQ/N
2. POM Darren Guerriere	29396	950541	110 PCT
3. POM David Rene	30439	949905	110 PCT
4. Officers			
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Miguel Mora	19490	953136	PBQ/N
2. POM David Park	27939	954215	PBQ/N
3. POM Robert Bailey	10064	954514	PBQ/N
4. POM Donald Lee	21090	947166	110 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM John Maguire	Discourtesy: PO John Maguire spoke rudely to § 87(2)(b)	
B.POM Darren Guerriere	Force: PO Darren Guerriere used physical force against § 87(2)(b)	
C.POM David Rene	Force: PO David Rene used physical force against § 87(2)(b)	
D. Officers	Discourtesy: Officers spoke rudely to § 87(2)(b) and individuals.	
E.POM Darren Guerriere	Discourtesy: PO Darren Guerriere spoke rudely to § 87(2)(b) and individuals.	

Officer(s)	Allegation	Investigator Recommendation
F. An officer	Abuse: An officer threatened to arrest § 87(2)(b) and individuals.	

Case Summary

On January 20, 2014, at 4:15 a.m., § 87(2)(b) was with his brother § 87(2)(b) his cousins § 87(2)(b) and § 87(2)(b) (last names unknown), and his friend § 87(2)(b) outside of a taco stand at Roosevelt Avenue and Elmhurst Avenue in Queens. As they waited for their order, PO John Maguire and PO David Park of Patrol Borough Queens North walked past the group four times and looked at them. § 87(2)(b) asked § 87(2)(b) what the officers were doing and why they were looking at the group waiting for food. § 87(2)(b) told § 87(2)(b) to ignore them.

The fourth time the officers walked past, PO Maguire said, “Enjoy your tacos, you little punk” (**Allegation A**). § 87(2)(b) became highly irate after PO Maguire made this statement, which was captured in video provided by IAB (attached to IA numbers 156, 158, and 159). In those videos, PO Maguire asked § 87(2)(b) multiple times for his identification—requests which § 87(2)(b) refused. PO Park issued multiple commands to the group to “take a walk” and not get too close to the officers. § 87(2)(b) took out his phone to record the interaction. § 87(2)(b) and PO Maguire stood several feet from each other as they spoke.

PO Darren Guerriere and PO David Rene of the 110th Precinct then arrived at the location. PO Guerriere approached § 87(2)(b) without saying anything. As § 87(2)(b) backed away from PO Maguire, PO Guerriere grabbed the front of § 87(2)(b)'s jacket with both hands, pushed § 87(2)(b)'s back against a storefront gate, and tackled him to the ground (**Allegation B**). This was shown in a video taken by § 87(2)(b) which was subsequently uploaded to Youtube (encl. 14L, attached to IA #25 and IA #157).

Five officers approached to assist PO Guerriere to handcuff § 87(2)(b). § 87(2)(b) screamed that an officer, later identified as PO Guerriere, was punching § 87(2)(b) (**Allegation B**). Approximately 45 seconds after § 87(2)(b) ended up on the ground, PO Guerriere punched § 87(2)(b) in the side of his body with his right fist approximately four times. Officers issued numerous commands to stop resisting. At that point, § 87(2)(b) alleged that PO Rene kicked § 87(2)(b) once in the face (**Allegation C**). The video of the incident did not show PO Rene kick § 87(2)(b) in the face.

In the video, an unknown object, later identified by multiple officers as a bottle of ketchup, landed near the officers who were handcuffing § 87(2)(b). An unknown officer, who was not on camera, asked, “Who fucking threw that?” (**Allegation D**). The officers were unable to determine who threw the bottle.

§ 87(2)(b) approached to a few feet away from § 87(2)(b) and the officers to protest the use of force. In the video, officers tried to pull § 87(2)(b) up from the ground, at which point he screamed for the officers to call a captain or a sergeant. The video footage showed that the officers took several minutes to handcuff § 87(2)(b). PO Guerriere got up, approached § 87(2)(b) and gently pushed him. § 87(2)(b) did not fall down as a result. During the video of the incident, PO Guerriere got up and exclaimed, “Everybody get the fuck out of here now” and grabbed § 87(2)(b) by the arm to guide him away from § 87(2)(b) (**Allegation E**). PO Donald Lee, who had responded to the incident, stood to the side and told § 87(2)(b) “If I have to tell you to back up again, you’re going with us.”

PO1, an unidentified officer who was described as a 30-year-old white male who was 5’9”-5’10” tall and was wearing a scarf-like garment that covered most of his face, told § 87(2)(b) and his group to go across the street. § 87(2)(b) refused and said he had done nothing wrong. PO1 responded, “We don’t give a shit.” PO2, another identified officer who was described as a 28-year-old white male who was 5’9”-5’10” tall and wore a scarf-like garment that covered most of his face, approached § 87(2)(b). § 87(2)(b) told him that he was waiting for food. PO2 said, “I don’t give a fuck. Go across the street or you’re all getting arrested”

(Allegations D and F). The video footage of the incident showed that an officer, who was not on camera, said, “I don’t give a shit... Go across the street.”

§ 87(2)(b) was eventually handcuffed after several minutes and an ambulance responded to the scene to transport him to the hospital. He was charged with § 87(2)(b)

Mediation, Civil and Criminal Histories

- On § 87(2)(b), § 87(2)(b) filed a Notice of Claim with the City of New York claiming loss of enjoyment of life, loss of freedom, emotional distress, mental anguish, shame, humiliation, indignity, and damage to reputation, and seeking \$20,000,000 as redress (encl. 132-133).

- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) and the first complaint in which § 87(2)(b) has been a victim. Additionally, it is the first complaint in which PO Maguire, PO Guerriere, and PO Rene have been subjects. However, PO Guerriere is also a subject of a physical force allegation in CCRB #201411444, which is open (encl. 14g-k).

Potential Issues

- On January 27, 2014, a detective from TARU informed the investigator that a vendor for the NYPD camera at the incident location was dispatched and it was determined that the recorder had malfunctioned and had stopped recording on January 13, 2014.
- § 87(2)(b)'s attorney did not allow § 87(2)(b) to provide a statement to the CCRB due to his open criminal case. Witnesses § 87(2)(b) and § 87(2)(b) were all either unavailable or uncooperative.

Findings and Recommendations

Explanation of Subject Officer Identification

Officers who were off camera at different points during the incident said, “Who fucking threw that?” and “I don’t give a shit.” All of the officers who were interviewed were shown the video and were unable to identify which officers made those comments. None of the officers who were interviewed could identify any of the officers who were wearing face coverings in the video. § 87(2)(g)

Allegation Not Pleaded

In the video of the incident, PO Lee told § 87(2)(b) that if he had to tell him to back up again, he would be arrested. When PO Lee was interviewed on June 23, 2014, he testified that he had already told § 87(2)(b) to back up at least twice, and the members of the crowd could have been arrested for obstructing governmental administration for continually disobeying orders to stay back (encl. 69-70). Based on the videos, there was clear evidence that multiple civilians were instructed to stay back on numerous occasions. At the time that PO Lee informed § 87(2)(b) that he could be arrested, § 87(2)(b) was standing very close to § 87(2)(b) and could have interfered with the arrest. § 87(2)(g)

§ 87(2)(g)

Allegation A – PO John Maguire spoke rudely to § 87(2)(b)

It is undisputed that PO Maguire told § 87(2)(b) “Enjoy your tacos, you little punk.” Patrol Guide Procedure 203-09 requires officers to be courteous and respectful (encl. 1a). When PO Maguire was interviewed at the CCRB on May 21, 2014 (encl. 44-46), he stated that § 87(2)(b) had made unsolicited insults to PO Maguire and then had spit on PO Maguire’s shoe.

§ 87(2)(g)

Allegation B – Force: PO Darren Guerriere used physical force against § 87(2)(b)

It is undisputed that PO Guerriere pushed § 87(2)(b) against a storefront gate and then threw him to the ground. It is also undisputed that PO Guerriere punched § 87(2)(b) in the side of the body approximately four times. Pursuant to the incident, § 87(2)(b) sustained bruising to his nose and left eye, a laceration on the inside of his upper lip, and a scratch in the middle of his back. These injuries were documented in photos provided to IAB (encl. 23-25), as well as his arrest photo (encl. 127). § 87(2)(b) was treated at § 87(2)(b).

According to Patrol Guide 203-11 (encl. 1b), officers must use the minimum necessary force to effect an arrest. According to the accompanying Scale of Escalating Force guide for police students (encl. 1c), the appropriate force response to mild physical resistance is compliance techniques designed to physically overpower subjects by inflicting temporary pain that causes no lasting injury.

When PO Guerriere was interviewed at the CCRB on June 5, 2014, he stated that the only knowledge he had prior to arriving at the location was that there was a fight (encl. 63-65). PO Rene corroborated that a civilian flagged him and PO Guerriere down to inform them about a “commotion” (encl. 78-80).

PO Maguire stated that § 87(2)(b) “thrashed” his hand in PO Maguire’s face from a distance of about four to five feet and refused to provide identification. The video footage corroborated that § 87(2)(b)’s hand was raised and he refused multiple requests for identification. § 87(2)(g) PO Park testified on May 21, 2014, that § 87(2)(b) did not make any physically threatening motions towards PO Maguire (encl. 52-54).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: PO David Rene used physical force against § 87(2)(b)

§ 87(2)(b) testified on February 25, 2014, that PO Rene kicked § 87(2)(b) in the face after PO Guerriere punched § 87(2)(b) (encl. 26-30). The video showed the officers' feet near § 87(2)(b)'s body after PO Guerriere punched him, and none of the officers kicked § 87(2)(b). § 87(2)(b) did not testify on the advice of his attorney. However, he did testify to IAB on January 23, 2014, that he felt kicks to the right cheek, nose, left eye, and head. § 87(2)(b) did not specify to IAB who kicked him or describe who kicked him. § 87(2)(g)

Allegation D – Discourtesy: Officers spoke rudely to § 87(2)(b) and individuals.

As noted in the Officer Identification section, there was insufficient evidence to identify the officers who used profanity during the incident while off camera. § 87(2)(g)

Allegation E – Discourtesy: PO Darren Guerriere spoke rudely to § 87(2)(b) and individuals.

Video footage from the incident showed that PO Guerriere got up and told a group which included § 87(2)(b) “Everybody get the fuck out of here now.” According to P.D. v. Milne, an officer may use profanity in the heat of a highly dangerous situation. P.D. v. Milne, OATH Index No. 222/00 (encl. 2-14).

PO Guerriere’s justification for using profanity was that he feared for his safety due to the hostility of the crowd members, who outnumbered the officers and had thrown a bottle of ketchup. § 87(2)(g)

§ 87(2)(g)

Allegation F – Abuse of Authority: An officer threatened to arrest § 87(2)(b) and individuals.

§ 87(2)(b) testified that when he was told to leave the area, he informed an unidentified officer that he was waiting for food. The officer allegedly replied that § 87(2)(b) must comply with the directive or he would be arrested. The video footage of the incident showed that an officer, who was not on camera, replied, “I don’t give a shit... Go across the street,” but did not threaten to arrest § 87(2)(b). § 87(2)(g)

Team:

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date